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Robert S. Mueller III
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Law Enforcement Online

Facing the Challenges of Katrina

By LESLEY G. KOESTNER



In today's age of terrorism, what does the weaponry of law enforcement look like? Perhaps, it is as hydra-headed as the enemy—evolving, expanding, and changing to meet circumstances. Such an image also may describe the FBI's Law Enforcement Online (LEO), a conduit for intelligence information that forms a cornerstone of the organization's Information Sharing Initiative by providing links to federal, state,

local, and tribal law enforcement agencies nationwide.¹

For the past 10 years, the FBI has expanded the capabilities of LEO to such an extent that when Hurricane Katrina hit New Orleans, LEO was ready to help the community on many levels. What did LEO provide? Communication, information, expertise, full-time assistance, and direct access—all intangible resources needed by first-responding public safety officers facing the initial onslaught of an emergency. LEO's main focus after September 11 addressed terror-related events. Although not a terrorist incident, Katrina caused such widespread devastation that LEO immediately became operational to offer needed communications assistance to law enforcement personnel.

LEO's Role

A sample log illustrates how LEO helped convey information to law enforcement personnel during the aftermath of Katrina. This represents only one example of the many ways that LEO can contribute to the intelligence, investigative, and safety functions in law enforcement. Like the Internet on which it is built, LEO can be whatever its members want it to be.

Monday, August 29: As early morning weather reports warn of Katrina barreling toward New Orleans, the head of the FBI's LEO Policy, Planning, and Membership Unit keeps a close watch on the hurricane's progress. He advises the author and another agent to prepare for the possibility of setting up a virtual command

center (VCC). A VCC runs a software program that provides the capability to maintain an awareness of evolving situations for crisis management, allowing LEO members to track, display, and disseminate information in real time about street-level and tactical activities. After Katrina hits New Orleans and flood waters approach the FBI's office there, LEO personnel at the Criminal Justice Information Services (CJIS) Division in Clarksburg, West Virginia, create two VCCs that serve the affected area. VCC #1 provides aid specific to the FBI's temporary emergency local office, quickly set up in Baton Rouge, that helps track FBI employees and their relatives in and around New Orleans. VCC #2, also located in Baton Rouge, is a multifaceted tool to enhance the greater law enforcement community's situational awareness; it enables FBI Headquarters in Washington, D.C., to monitor events and resources in the affected areas and to help provide federal, state, and local support to the first responders. LEO personnel at FBI Headquarters support VCC #2 by processing LEO applications and updating the highlights page and other information.

Tuesday, August 30: About 20 calls per hour from FBI offices across the country come



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***With LEO,
law enforcement
personnel nationwide
can exchange vast
amounts of
information in
real time.***

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Special Agent Koestner serves in the LEO Policy, Planning, and Membership Unit, Programs Support Section, of the FBI's Criminal Justice Information Services Division in Clarksburg, West Virginia.

Plugging Into LEO's Vast Resources

Law enforcement personnel who want to participate in LEO's services need only fill out a form and have access to an industry-standard personal computer and an Internet connection. To apply for a LEO membership application and for information about LEO, contact the LEO Program Office at 202-324-8833, by fax at 202-324-3364, or by e-mail at leoprogramoffice@leo.gov. After signing up, LEO members will receive a packet of information, a disk of software, and scheduled training.

The LEO Web site is easy to navigate for quick access to information. Most law enforcement agencies have a staff member dedicated to watching the site. Immediately upon logging on, the member sees the highlights page, which presents the headlines and summaries of crucial news of the day culled from sources around the world with hotlinks to the full articles. LEO personnel usually update the highlights once a day. During unusual events, however, hourly updates are common. Representatives of the LEO Special Interest Groups may post highlights as needed.

into the Baton Rouge command posts to update the two VCCs. Most cellular and landline phones in the area do not work because of disabled electricity and communications lines, but a generator at the command post recharges cell phone batteries and powers the VCC.

Wednesday, August 31: VCC operators continue providing disaster recovery services to Alabama, Louisiana, and Mississippi. They track supplies and keep in touch with federal, state, and local government agencies and FBI Headquarters.

Thursday, September 1: From August 29 to September 1, LEO personnel process more than 150 new applications from federal government entities and local law enforcement for membership in LEO. This tally includes only those applications

from personnel whose duties relate specifically to the Katrina disaster.

Monday, September 5: As part of the VCC's services, LEO personnel generate the Hurricane Katrina Resource Locations map, which identifies the location of supplies, incident command posts, dispatching centers, FEMA offices, and other key resources. This and other maps, such as the Water Depth Analysis one, demonstrate how information and expertise can translate into ways to deliver concrete assistance. All LEO members can view the maps to learn the type and location of available resources and the areas deeply affected by flooding. From September 5 through 7, FBI staff from CJIS hold conference calls with LEO personnel and

law enforcement officers from affected areas to continue coordinating support for disaster recovery efforts.

Friday, September 9: By now, the flood waters have receded enough for the administration of VCC #2 to move from Baton Rouge to a newly established multiagency command post in New Orleans. Three days later, a new phase of LEO's response to Hurricane Katrina begins when the FBI's Criminal Investigative Division requests that LEO personnel set up a third VCC, operated from a command post at CJIS, to provide antifraud support. The TV news programs display the FBI's hotline number that people can use to report suspected fraud related to relief efforts. Examples of such fraud include people posing as

Katrina victims while trying to cash counterfeit FEMA checks or attempting to file fraudulent insurance claims.

The National Alert System

As seen in the Katrina-related activities, the VCCs can help law enforcement use LEO's services during crises. In July 2004, the LEO Operations Unit introduced the software program on which VCC services rely, emphasizing its use in conjunction with the National Alert System (NAS). Employed together during national and regional special security events, the VCC and the NAS can help facilitate communication within the law enforcement community. For example, NAS alerts generated from the VCC can reach all recipients simultaneously without the delay inherent in traditional phone trees.

The NAS, introduced in 2003, can deliver secure pop-up message boxes containing law enforcement sensitive information to 20,000 online members within 5 minutes—and simultaneously transmit them to all members' LEO e-mail accounts. An alert message contains a short synopsis and directs the recipient to additional information posted on a secure LEO site. The NAS also can send up to 160,000 unsecure notifications to pagers, cell phones,

and other wireless devices to advise users of an alert.²

The FBI's Strategic Information and Operations Center, which keeps a close eye on trends worldwide, posts NAS alerts as needed. Additionally, one member of each LEO Special Interest Group (SIG) has the appropriate authority to post a national alert.³ The VCC and NAS features of LEO are, in part, the reason it is called "a one-stop shop for the law enforcement community for FBI



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intelligence information, providing a central hub for horizontal and vertical information sharing to support investigative programs."⁴

In a presentation at the 2003 Annual International Association of Chiefs of Police Conference, FBI Director Robert S. Mueller III endorsed the LEO NAS as the means by which the FBI would securely and expeditiously provide critical

information to the law enforcement community. This effort constitutes part of the recommendation—included in the National Criminal Intelligence Sharing Plan developed by the Global Intelligence Working Group—that LEO become the national communications system for all levels of the law enforcement community. LEO's partnership with the Regional Information Sharing Systems (RISS) enhances its capability to share information. The LEO-RISS electronic interface enables registered users to access both systems with a single log-on and provides them with a secure e-mail system.

An Investigative Tool

Members use LEO's broad range of services in many different ways, depending on the needs of their individual agencies. LEO's value during the investigation of crimes and terrorist threats comprises a key feature that appeals to many members. For example, regional law enforcement agencies attempting to combat the proliferation of sales of stolen property in pawn shops could learn about similar initiatives nationwide by going to a topic-specific Web site. Using LEO, however, might provide more comprehensive investigative information because law enforcement personnel can

A Sample of LEO Services

Native Services ⁵	Hosted Services ⁶	Portal Services ⁷
eLearning: Courses include antiterrorism, forensic, and investigative training	Hostage Barricade Database System, e.g., records attempted incidents; uses data from participating agencies nationwide	Regional Information Sharing Systems: Program funded by U.S. Department of Justice; targets such activities as drug trafficking, terrorism, violent crime, cyber-crime, and gang activity; shares intelligence across jurisdictions
Special Topics Index, e.g., cargo theft, legal updates, drug trafficking, stolen art	Infrastructure Protection Directorate: National focal point fostering dialog about computer intrusions	Joint Terrorism Task Force Information Sharing Initiative: Access at LEO controlled through LEOSIG
LEO Library: Publications and technical bulletins; controlled access to relevant Internet sites	Law Enforcement Interagency Linguist Access (LEILA): Sharing with intelligence community linguist resources who have consented to being in the LEILA database	Joint Automated Booking System: Handles data collected during booking process; shares with Bureau of Prisons, DEA, FBI, Bureau of Immigration and Customs Enforcement, and U.S. Marshals Service
LEOSIGs: Custom services, e.g., private segmented areas for user groups; SIGs create, for example, newsgroups and chat rooms	National Alert System (NAS): Real-time secure alerts via LEO to law enforcement community nationwide; for sensitive but unclassified security-related alerts; generates pop-up screens sent to wireless devices	National Center for Missing and Exploited Children: Helps local and federal law enforcement share information
Mailing lists via listserv: Supports general and SIG mailing capability		National Law Enforcement Telecommunications System: Connectivity tool
E-mail within LEO community: Scanned for viruses, worms, trojan horses—both incoming and outgoing; hourly virus updates		Internet Café: Can facilitate NAS postings propagating from LEO to café e-mail system
Search engine: Controls access within LEO portal services	**Note: This is only a brief summary of the many services that LEO provides. Security measures differ as needed among the various services.	



track trends of not only specific crimes but also multiple criminal offenses throughout the country. This broad picture could prove valuable in an investigation. During Katrina, people posing as victims tried to file false insurance claims on hurricane-damaged property that they never owned and tried to cash computer-generated checks supposedly from FEMA, claiming that they had lost their identification papers during the hurricane. With LEO, investigators tracked these fraudulent activities and identified trends showing spikes as a direct result of the hurricane. Thus, law enforcement nationwide knew to look out for these types of fraud.

Conclusion

As the FBI evolves from its traditional focus on law

enforcement to its post-September 11 mission, which includes the homeland security priorities of counterterrorism, counterintelligence, and cybercrime, LEO plays a crucial role. During the disaster recovery and antifraud efforts following Hurricane Katrina, law enforcement personnel nationwide used LEO to exchange vast amounts of information in real time. LEO's services were ready and available during the aftermath of Katrina and remain on call for the nation's next emergency. ♦

Endnotes

¹ For further discussion about the FBI's post-September 11 focus, access its Web site at <http://www.fbi.gov/pressrel/speeches> for such entries as "Statement of Robert S. Mueller III, Director of the Federal Bureau of Investigation, Before the United States House of Representatives Committee on Appropriations,

Subcommittee on Science, State, Justice and Commerce," September 14, 2005; "Tomorrow's FBI: Changing to Meet New Challenges," Director Robert S. Mueller III, for the Council on Foreign Relations, June 22, 2004; and "The New FBI: Protecting Americans Against Terrorism," Director Robert S. Mueller III, for the American Civil Liberties Union 2003 Inaugural Membership Conference, June 13, 2003.

² Encryption and secure transmission methods maintain the integrity of the alerts.

³ LEO Special Interest Groups are made up of authorized users who share a common organizational purpose or technological discipline.

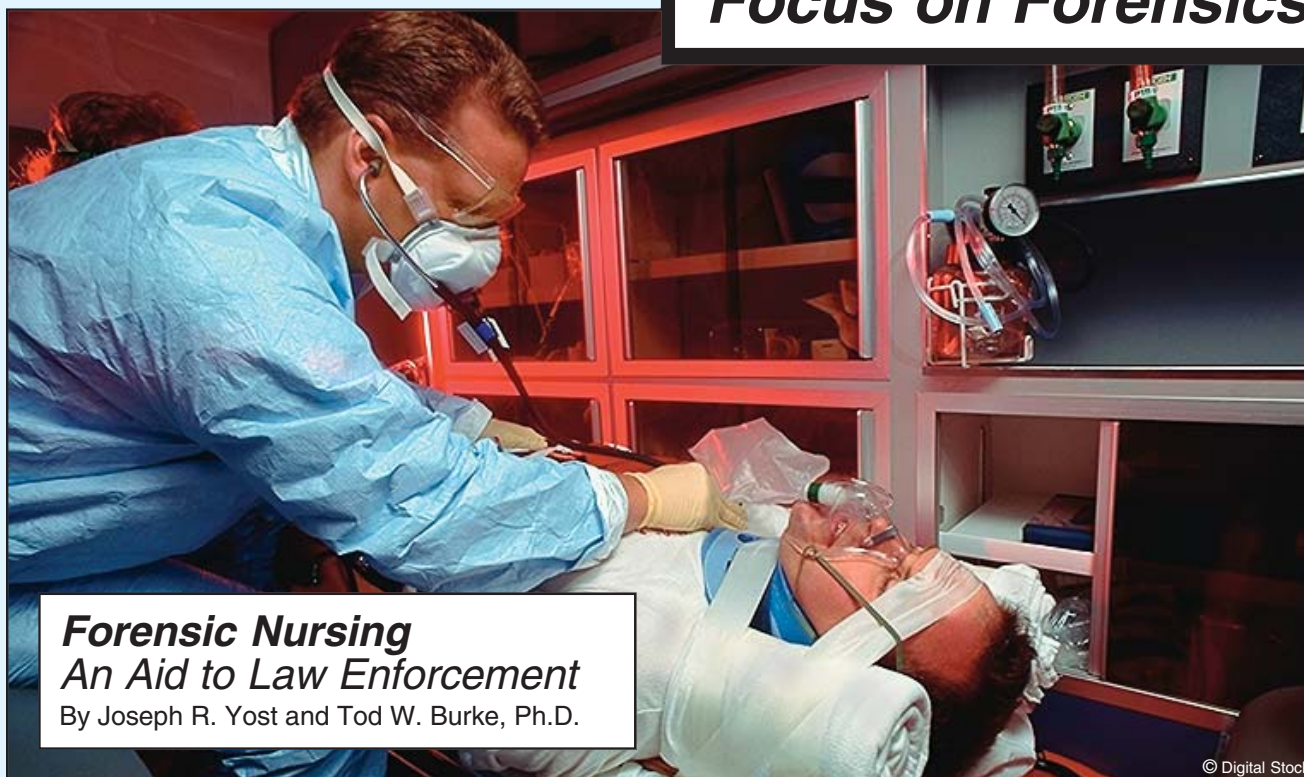
⁴ Special Agent Kenneth A. Cassine, chief of the FBI's LEO Policy, Planning, and Membership Unit, Programs Support Section, Criminal Justice Information Services Division, Clarksburg, West Virginia.

⁵ Native services are provided to all LEO members via a Web browser or other interface.

⁶ Hosted services exist within the LEO network and have their own database or applications for storing and retrieving interest-specific information.

⁷ Portal services provide connectivity to or from remote law enforcement services not housed or maintained on the LEO network but connected via a wide-area network or secure Internet link.

While Hurricane Katrina overwhelmed the area, many stalwart men and women from local and state law enforcement, fire services, and other public safety agencies tried valiantly to rescue citizens and provide relief to those in need. The author dedicates this article to these unfaltering and selfless individuals who performed their duties in the face of extreme adversity.



Forensic Nursing **An Aid to Law Enforcement**

By Joseph R. Yost and Tod W. Burke, Ph.D.

The unidentified male is rushed to the hospital via ambulance. He is unconscious, with a gunshot wound to his chest. The trauma team has been alerted prior to his arrival. While each team member has a role in the immediate care of the victim, the forensic nurse cuts off his clothes, careful to avoid the bloody hole where the bullet pierced his shirt. The nurse puts each article of clothing in a separate container, places brown bags over the patient's hands, and searches his pockets for anything that could identify the young man.¹

Gunshot wounds, drug overdoses, sexual assaults, and stabbings constitute just a few cases that involve forensic nurses who administer medical attention to individuals with traumatic injuries and those involved in catastrophic accidents, as well as provide assessment and care to both victims and perpetrators of crime and to their families.² A relatively new field in the criminal justice arena, forensic nursing originated in the early 1990s. While not lawyers or police officers,

forensic nurses provide a needed link between medicine and the law. In 1992, 70 nurses gathered in Minneapolis, Minnesota, for the first national convention of sexual assault nurses, which led to the formation of the International Association of Forensic Nurses (IAFN).³ Three years later, the American Nurses Association officially recognized forensic nursing.⁴ As of 2004, the IAFN has over 2,400 members.⁵ As a result, forensic nursing has become one of the fastest growing specialties in the field of nursing.

Forensic nurses must be a registered nurse (RN),⁶ a trained medical professional licensed by a state authority.⁷ Once they have earned an RN license, nurses who desire to specialize can take selected courses in the field of forensic science that would cover such topics as collection and preservation of physical evidence, wound identification, law enforcement investigation, documentation procedures and chain of custody, and preparation for court testimony.⁸ Various universities across the nation provide education and training for those

seeking a career as a forensic nurse, presenting them with classroom lectures and discussions, laboratory experience, and internships at local hospitals. One forensic nurse indicated that she first became an RN and later decided to become a forensic nurse. She successfully completed the required courses, including evidence preservation and collection, photography, and wound identification. She also observed the functions of law enforcement by riding with a police officer for a specified number of hours and learned about the courtroom process by witnessing trial procedures.⁹

THE LAW ENFORCEMENT ASSOCIATION

The general term *forensic nurse* encompasses several areas of expertise that RNs can specialize in to aid law enforcement officers in many ways. These include sexual assault nurse examiners, forensic correctional nurses, forensic geriatric nurses, forensic legal nurse consultants, forensic nurse investigators, forensic pediatric nurses, and forensic psychiatric nurses.

Sexual Assault Nurse Examiners

The sexual assault nurse examiner (SANE)¹⁰ specializes in providing care and treatment to sexual assault victims.¹¹ The duties of the SANE include assessing injury, objectively documenting the health history of the victim, recording information about the crime, screening for sexually transmitted diseases, collecting and preserving forensic evidence, and aiding the victim.¹²

Because SANEs frequently work closely with assault victims, most possess some education and knowledge in the field of victimology, the study of victims and crime.¹³ Most SANEs follow the victim through the entire criminal justice system,

often offering a sympathetic ear. SANEs operate on the belief that victims should receive thorough medical evaluations, treatment by skilled professionals, and knowledgeable support.¹⁴

All SANEs have to be certified through a comprehensive, usually 40-hour, training program that includes gathering medical histories from victims, conducting physical exams, identifying wounds and patterned injuries, and collecting evidence, as well as learning some interview techniques and basic forensic photography. This training also may prove valuable to law enforcement officers investigating cases of assault.¹⁵

Forensic Correctional Nurses

Forensic correctional nurses provide medical attention to individuals charged and convicted of a crime. They often are employed in prisons, jails, and juvenile detention centers.¹⁶ Their responsibilities include giving prescribed medications to in-

mates, running the correctional facility's hospital, and treating the victims of inmate fights. Forensic correctional nurses also serve as potential negotiators. For example, an inmate barricaded himself in his room and, using a mop ringer as a weapon, threatened to kill the first person who attempted to intervene. Officials called in a forensic correctional nurse who told the prisoner that police officers were en route, and, if he did not immediately calm down, they would take corrective action. The inmate, known to tear through restraints, broke down and submitted without incident.¹⁷

Forensic Geriatric Nurses

Forensic geriatric nurses care for aging individuals and often handle the human rights issues of abuse, neglect, or exploitation.¹⁸ Nursing home facilities or retirement communities usually employ these nurses who also can have their own

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Forensic correctional nurses provide medical attention to individuals charged and convicted of a crime.

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independent practices.¹⁹ They use their knowledge and skills most often in cases of elder abuse or neglect. In one incident, an elderly woman arrived in the emergency room of a hospital with a swollen right eye, bruises on her arms, and severe dehydration. The forensic geriatric nurse on staff took pictures of the injuries as they appeared to be possible signs of elder abuse. When the elderly woman became coherent 2 days later, she explained that her son had become frustrated with her declining health. She stated that he would tell her that she needed to try harder. If she failed to do so, he would strike her. The intervention of the forensic geriatric nurse prevented the woman from being released her back to her son. Instead, she was immediately assigned to an assisted living center where she would have minimal contact with her son.²⁰

Forensic Legal Nurse Consultants

Forensic legal nurse consultants use their clinical knowledge to assist attorneys in cases where law and medicine overlap.²¹ They often use their knowledge in civil, rather than criminal, cases.²² These nurses typically have their own practices or work for major law or insurance firms. Their duties can include verifying malpractice and negligence claims, preparing and analyzing records, providing legal assistance, and serving as expert witnesses.²³ While law enforcement officers focus on criminal law, they also may have to testify in civil litigations (tort actions), such as automobile accidents and assaults. The forensic legal nurse consultant could aid officers in understanding the components of civil actions. For example, in a malpractice case where a man died as a result of a farming accident, a forensic legal nurse consultant reviewed the file information and testified that the doctor was negligent when allowing the patient to be air transported to the hospital before he was stable.²⁴ If police officers had arrived on the scene to assist the victim or to investigate the incident, they most likely would have been named in the lawsuit.

Forensic Nursing Programs in the United States

General Forensic Nursing

Beth-El College of Nursing,
Colorado Springs, CO

Bossier Parish, North Bossier City, LA

University of Pennsylvania,
Philadelphia, PA

University of Scranton, Scranton, PA

Graduate Level

Duquesne University, Pittsburgh, PA

Gonzaga University, Spokane, WA

John Hopkins University,
School of Nursing, Baltimore, MD

Monmouth University,
West Long Branch, NJ

Source: <http://www.iafn.org/resources/educational.html>

Forensic Nurse Investigators

Employed by medical examiners, forensic nurse investigators conduct scientific investigations of the crime scene and the circumstances surrounding the victim's death.²⁵ For instance, a 6-month-old baby was found dead in his crib, and the forensic nurse investigator was called to investigate the death. Upon arrival at the scene, she was told that there was no history of disease or abuse. When the nurse entered the child's room, she noticed a distinct odor of vomit. She asked the mother if the baby had been sick. The forensic nurse investigator learned that while the baby had shown no signs of previous illness, his older brother had complained of stomach problems for several days.

The nurse observed green paint peeling off the steam radiator pipe that snaked across the apartment. She lifted the dead infant's lip and observed a thin, bluish lead line on the baby's gums. She then instructed the mother to have herself and her children tested for lead poisoning. The test verified the nurse's suspicions. The entire family had contracted lead poisoning from the paint flaking off the pipe.²⁶

Forensic Pediatric Nurses

Forensic pediatric nurses care for children and often encounter the human rights issues of abuse, neglect, or exploitation.²⁷ These nurses often are in independent practices or work in the pediatric department of hospitals.²⁸ In one case, an 8-year-old girl was brought into the hospital one night complaining of pain in her pelvic region. The forensic pediatric nurse on staff performed a pelvic exam on the youngster and discovered several abrasions and bruises. Further investigation revealed that the father had sexually abused her. As a result of the forensic pediatric nurse's examination, the physical evidence collected, and the testimony of the child, authorities arrested the father and charged him with molestation.

Forensic Psychiatric Nurses

Forensic psychiatric nurses handle offenders who are mentally ill. They often work in forensic psychiatric practices, state hospitals, and psychiatric facilities within correctional institutions.²⁹ One of their major roles involves determining the competency of offenders. These nurses must have a thorough understanding of the criminal justice system, as well as the necessary elements for competency.³⁰ Forensic psychiatric nurses often testify in court regarding competency issues. In one instance, a judge asked a forensic psychiatric

nurse to determine the competency of a subject who had brutally murdered his mother. After conducting an extensive interview with the son, the forensic psychiatric nurse determined that he exhibited signs of mental illness and required hospitalization and, therefore, was not competent to stand trial.³¹

THE EVIDENCE CONNECTION

Documentation of evidence proves critical to any investigation, including ones where forensic nurses have become part of the effort. These nurses should adhere to all evidence collection and preservation techniques without exception and maintain the chain of custody to ensure that no evidence is ruled inadmissible in a court of law.

Collecting Evidence

Forensic nurses may prove invaluable to investigators, particularly when a victim is transported to an emergency room. In that setting, forensic nurses on staff should document all proceedings pertaining to the victim, including a complete medical report that covers all treatment administered and the location of any bruises, cuts, scrapes, or lacerations.³² Photographs of all of the victim's injuries also are essential for proper documentation and should include close-up, mid-range, and full-body images.³³ When practical, they should contain a photographic scale or ruler for comparison.³⁴

When collecting physical evidence, forensic nurses should wear gloves to minimize contamination and follow basic techniques and procedures. Law enforcement investigators attempting to collect evidence from victims may seek assistance from forensic nurses who could swab for saliva or semen, collect bullets and gunshot residue from the body, and bag the victim's clothing for future analysis.³⁵

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Forensic nurses may prove invaluable to investigators, particularly when a victim is transported to an emergency room.

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Handling Evidence

Once they have collected the evidence, forensic nurses should place each sample in a separate container and seal it to prevent contamination. The victim's name, date, time, and case number should appear on the label accompanying the evidence, along with the forensic nurse's name, identification number (if any), and location where the evidence was recovered. It would prove helpful to law enforcement officers to assist in training forensic nurses, particularly when requesting forensic evidence and adhering to the proper chain of custody. Failure to maintain proper evidence and chain of custody may jeopardize a case. In a hypothetical situation, a forensic nurse collected evidence, but, in a rush to treat another victim arriving in the emergency room, failed to include the date and time. This type of action would break the chain of

custody and cause the court to rule the evidence inadmissible.

In addition to maintaining a proper chain of custody, forensic nurses must be careful in handling evidence. For example, a victim with a single gunshot to the head arrived at a hospital. In the emergency room, the forensic nurse removed the bandages from the victim's head that the emergency medical technicians had applied at the scene of the shooting. Unknown to the forensic nurse, the bullet had dislodged into the bandages. While the projectile was later discovered in the trash, the evidence was inadmissible because it could not be traced to the victim.³⁶

Testifying in Court

Forensic nurses also may serve as expert witnesses in court. Sometimes, this poses problems.

Specialties in Forensic Nursing

- Sexual assault nurse examiners (SANE) are specially trained to treat and care for victims of sexual assault.
- Forensic correctional nurses provide medical attention for individuals charged with and convicted of a crime.
- Forensic geriatric nurses care for aging individuals with an emphasis on the human rights issues of abuse, neglect, or exploitation.
- Forensic legal nurse consultants use clinical knowledge to help attorneys in cases where the law and medicine overlap.
- Forensic nurse investigators, employed by medical examiners, conduct scientific investigation of the crime scene and the circumstances surrounding the death of a victim.
- Forensic pediatric nurses care for children, with an emphasis on human rights issues of abuse, neglect, or exploitation.
- Forensic psychiatric nurses administer aid to offenders with mental abnormalities.

Source: <http://www.forensiceducation.com/specialties.html>

When a doctor and forensic nurse provide contradicting information, attorneys can use this to their advantage. If a nurse and doctor provide conflicting information, the testimony of the doctor most likely will be believed over that of the nurse. For example, a SANE had performed an examination on a sexual assault victim. The doctor on call deemed it necessary that he be there to sign off on the case, even though he did not conduct the examination. As both the doctor and the forensic nurse were present during the examination, both were subpoenaed to court. When providing their testimony, both the doctor and the SANE identified the same injuries but in different locations on the body. The judge considered the doctor's testimony, which later proved incorrect, as more accurate. The defense counsel noticed the discrepancy in the two testimonies and used it to win the case.³⁷

CONCLUSION

While a relatively new profession, forensic nursing already has successfully helped bridge the gap between the two fields of law and medicine. The high demand for forensic nurses will likely continue as doctors and law enforcement officials recognize the need for their valuable expertise. Those not currently employing forensic nurses can contact their local hospital or the nearest forensic nurse program by accessing the International Association of Forensic Nurses' Web site at <http://www.iafn.org/resources/default.html>. Bringing the two worlds of medicine and law enforcement together can help both fulfill their different, yet complementary, missions. ♦

Endnotes

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¹¹ Supra note 2.

¹² Supra note 10, 45.

¹³ Supra note 10, 48.

¹⁴ Supra note 10, 48.

¹⁵ Supra note 10, 48.

¹⁶ Supra note 6.

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²² Sue E. Meiner, "The Legal Nurse Consultant," *Geriatric Nursing* 26, no. 1 (January/February 2005): 34-36.

²³ Ibid.

²⁴ Supra note 10, 148-149.

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²⁶ Supra note 10, 157-158.

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³¹ Supra note 10, 210-211.

³² Serita Stevens, "Cracking the Case: Your Role in Nursing," *Nursing* 2005 34, no. 11 (November 2004): 54-56.

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Supra note 10, 22-23.

³⁷ Supra note 10, 130-131.

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What Is Leadership?

Leadership seems to be the marshaling of skills possessed by a majority but used by a minority. But it's something that can be learned by everyone, taught to everyone, denied to no one.

—Warren Bennis and Burt Nanus
Leaders: Strategies for Taking Charge

The age-old question of nature versus nurture is still alive and well in the field of leadership development. Are leaders born or made? If leaders are born with some innate ability to lead, then what does it mean for those not born with this trait? If leadership is learnable, then what exactly do people need to learn to become effective leaders? In fact, what exactly is leadership?

Leaders are born *and* made. Clearly, some people have natural abilities, such as good communications skills, compassion, and decisiveness. However, effective leadership entails such a wide variety of behaviors and skills across an extensive array of circumstances that no one person could possibly be born with all of the qualities necessary to serve in that capacity for all situations. Thus, effective leadership necessarily involves some degree of acquired learning—in most cases, a very substantial degree.



Leadership is more about behavior, skills, and competencies than simple innate traits. Leadership effectiveness is a lifetime pursuit necessarily dedicated to self-awareness and reflection, critical thinking, and action. It is a multifaceted endeavor that touches everyone everywhere.

Each month in *Leadership Spotlight*, the faculty of the Leadership Development Institute (LDI) at the FBI Academy will offer insights into the countless issues that comprise effective leadership. LDI staff members have spent thousands of hours researching, studying, and presenting material on the subject.

While they do not have all of the answers, they do hope to engage readers in this topic of crucial importance to the law enforcement community. ♦

Dr. David S. Corderman, special agent and chief of the Leadership Development Institute at the FBI Academy, prepared Leadership Spotlight.

Drowning Investigations

By GARY HAUPT



On a lake in Missouri, investigators made a grisly discovery. They found a white male floating with a heavy boat anchor attached to him with a rope. The subsequent autopsy revealed that someone killed him and dumped his body into the water. Eventually, authorities arrested a suspect who later was convicted of murder.

Another case involved a man who was accidentally ejected from a boat traveling at a high rate of speed on a Missouri lake. Apparently, he hit

his head, became unconscious, and drowned, disappearing below the surface of the water. The incident occurred in the main channel of the lake, which measured over .5 mile wide and varied from 70 to 110 feet deep. A witness could not closely identify the location of the accident, hampering investigators' attempts to locate the victim. To further complicate matters, the area had a substantial amount of underwater timber that remained from before the formation of the lake. Authorities made numerous

attempts to recover the man's body by dragging, scuba diving, and using canines—all of these methods proved unsuccessful. Five years later, the remains of a decomposed foot wearing a sock and a tennis shoe surfaced and began floating in the approximate area of the lake where the man's body disappeared. Authorities identified the sneaker as the one worn by the victim before the accident. Decay was well advanced, and the joint at the ankle had completely rotted away, allowing the foot to float free from the

body. Although most corpses come to the surface during the decomposition process, this case probably represented one of the rare instances in which a body remains entangled in some type of underwater obstruction, such as timber or brush.

Law enforcement personnel conduct a large number of drowning investigations. Some involve homicides or suicides, but most result from accidents. Drowning represents the fourth leading cause of accidental death in the United States, with between 4,000 and 5,000 incidents occurring annually.¹ This number alone indicates that many police officers, in the marine environment and otherwise, will routinely investigate drowning deaths. Agencies need to ensure that their personnel remain well prepared to handle these cases when they arise.

DEATHS BY DROWNING

Definition

Drowning refers to death due to submersion in a liquid—as shallow as 6 inches in cases involving infants, the elderly, people afflicted with epilepsy, or individuals under the influence of alcohol or other drugs. Irreversible cerebral anoxia, or lowered oxygen to the brain, due to asphyxiation serves as the mechanism of death.²

Experiments conducted in the late 1940s and early 1950s suggested that many drowning deaths resulted from electrolyte disturbances or cardiac arrhythmia produced by high volumes of water entering the circulatory system through the lungs. However, present thought considers hypoxemia, or deprivation of oxygen to the systems of the body, the most important physiological consequence of drowning. Also contrasting previously held theories, recent research suggested that the heart and kidneys can compensate for large amounts of water absorbed by the lungs. In near-drowning cases, physicians have not observed the electrolyte changes previously thought to occur. This information should not discount the possibility of cardiac irregularities

due to the inundation of the circulatory system when an individual absorbs large volumes of water; this heart-related stress can contribute to death.³

Experts consider some individuals who drown as victims of dry drowning. In these cases, the fatal cerebral hypoxia, or oxygen deprivation, does not result from water occluding the airway but, rather, from a spasm of the larynx. Water never enters the lungs. These instances constitute 10 to 15 percent of all drownings.

When people sink beneath the surface of the water, they initially react by holding their breath. This continues until they have to breathe, thereby involuntarily inhaling a large volume of water, which either enters the lungs (in most instances) or reaches the larynx—producing

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...many police officers, in the marine environment and otherwise, will routinely investigate drowning deaths.

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Captain Haupt serves with the Missouri State Water Patrol in Branson.

the laryngeal spasm that results in dry drowning. In both cases, this gasping for air may continue for several minutes until respiration ceases. Cerebral hypoxia will progress until it becomes irreversible and death occurs.⁴

The point at which a person dies depends largely on the age of the victim and the temperature of the water—if warm, somewhere between 3 and 10 minutes. Some rare situations involving submersion of children in extremely cold water (less than 40°F) have resulted in successful resuscitation with complete recovery after longer periods of time, the longest being 66 minutes. Such cases probably result from the more rapid development of hypothermia in children. Most commonly, people lose consciousness within 3 minutes of submersion. Also, recent research has indicated that the type of water inhaled, whether fresh or salt, probably has very little influence on whether the individual will survive if resuscitation is initiated.

Death by cardiac arrest, rather than by drowning, presents another possibility when individuals become suddenly and unexpectedly submersed in cold water or overexerted. Additionally, uncontrollable respiratory distress due to cold water immersion may cause the victim to inhale water,

and investigators may falsely suspect drowning.

The Body in Water

The human body weighs slightly more than fresh water. Consequently, when individuals become unconscious, they sink—regardless of fat level, which slightly increases buoyancy. Generally, a drowning victim will reach the bottom

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of a body of water in spite of the depth, unless it meets some obstruction on the way down. As the corpse descends further, the pressure of the water tends to compress gases in the abdominal wall and chest cavities. As a result, the body displaces less water as it sinks and, consequently, becomes less buoyant the further down it goes, until it reaches the bottom.⁵

If a corpse does not sink, investigators should suspect another cause of death, such

as heart attack. Or, perhaps, a dry drowning has occurred; in those cases, because the lungs do not contain water, the body will not descend.

Almost without exception, a corpse lying on the bottom of a lake or river eventually will surface because of the gas formed in its tissues as a result of decay and the action of internal bacteria. This results in reduced specific gravity of the body so that it rises. Witnesses to this event have described corpses breaking the surface of the water with force, like the popping of a cork.

Factors that effect the length of time for a body to surface after drowning include fat content, consumption of beverages and food preceding death, water temperature at the bottom, and depth at the location. Recent meals high in carbohydrates (e.g., candy, beer, and potato chips) nourish certain bacteria that will encourage quick refloat.⁶ In warm and shallow water, the gases within the body form rapidly, resulting in a possible rise to the surface within a day or two. In deep and cold water, bacterial action takes place slowly, and the corpse may not appear for several weeks.⁷ When the body becomes greatly distended with gas, the tendency to float increases. Many well-documented cases exist of homicide victims dumped into lakes and rivers

and then later surfacing, even though perpetrators attached heavy weights to them.

In some cases, the body may remain immersed. Extremely deep, cold water conditions (e.g., natural glacier lakes, deep impoundments) may prevent a corpse from ever becoming buoyant enough to overcome the immense water pressure.

Rivers and the Effects of Currents

Rivers differ from other bodies of water in two ways—they are shallow and have currents. Depths of less than 10 feet do not have a high level of compression on the internal air spaces of drowning victims.

In extremely heavy currents, such as in flash-flood situations, the victim's body probably will roll on the bottom for a considerable distance—trees or other debris also may carry along the corpse. During normal conditions in most rivers, this is not the case, and investigators usually will find victims on the bottom relatively close to the drowning site. However, after the body floats to the surface, it may drift due to the current before washing ashore or coming to rest in a back eddy.⁸

Lakes and the Depth Factor

Victims who drown in lakes will sink to the bottom in the area below the point of submergence; authorities usually will

locate the body within a radius equal to the depth of the water. However, witness error can come into play. Even when someone sees the incident, authorities may find establishing the site difficult or impossible if the victim drowned far from shore. Because of panic and anxiety, people usually do not think to mark the location where the individual went down or to note nearby landmarks,



thereby eliminating triangulation as an option. Investigators find it hard to locate drowned victims in lakes unless the incident occurred near the shoreline, from an anchored boat, or at a dock secured to the shore. This problem becomes further complicated in deep and dingy water, which may eliminate any possibility of recovery attempts by scuba divers. Often, waiting for the body to float to the surface becomes the only viable option.

Lakes rarely have a current strong enough to affect a body sinking or surfacing. However, the victim likely will move after refloat, and wind can push corpses. In lakes, the effect of even slight wind movement easily can offset any current that might exist.

Often, especially in the summer months, lakes have definite thermoclines—two layers of water at different temperatures. While the surface can measure 75 to 90°F, the temperature can drop 20 to 30°F at a depth of 40 feet—this cold water will tend to retard the refloatation process.⁹ A myth exists that a drowning victim can become suspended on a thermocline because of the difference in water density between these two layers. However, no known case exists of this happening; in fact, internal air compression on descent and expansion on ascent make this virtually impossible.¹⁰

CONSIDERATIONS FOR INVESTIGATORS

Investigators can look for some distinctive signs to determine cases of drowning. Officers must recognize these indicators and then articulate them to the medical examiner. Presently, no known and proven pathological test exists to determine drowning as the cause of death, so, by itself, an autopsy usually proves insufficient.

Authorities can make this diagnosis only with a knowledge of the circumstances and exclusion of other causes.

Investigators need to answer several questions in apparent drowning cases. For instance, did the person drown, or did perpetrators kill the individual and dispose of the corpse in the water? Was the victim conscious upon submersion? Could the person swim well? Did the victim consume any alcohol or drugs? What was the individual doing at the time? Did anyone witness the incident? If any injuries exist on the body, were they caused before death (antemortem), at the same time (agonal), or afterwards (postmortem)? In the course of their investigation, authorities will find that a combination of external signs will provide valuable information.¹¹

Bodily Substances

Investigators should look carefully around the victim's head, face, and mouth for any signs of vomitus. They should make this observation first as this very transient evidence easily can wash away. Presence of vomit serves as a reliable indicator that the victim became submerged while alive.

Foam often exudes from the nose or mouth of victims of wet drownings. This froth results from a mix of mucous, air, and water during respiration. Its

presence serves as an indication that the person became immersed while still breathing, although authorities do not consider it conclusive evidence that the individual drowned. Some blood resulting from the tearing of lung tissue by forceful breathing just prior to unconsciousness may exist with it. Investigators should note that decomposition can

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destroy the foam.¹² This froth is similar to that often found on individuals who have died from acute heart failure or a drug overdose, both of which usually result in massive pulmonary edema.¹³

Transient in nature, this frothy foam easily can wash away during recovery operations. Sometimes, it may continue to ooze from the nose and mouth for a period of time after recovery. In other cases, no visible signs of it may exist, even in confirmed drownings.

The lack of a froth cone is more typical when the victim did not fight the drowning process and gasp forcibly for air when disappearing below the surface of the water (e.g., intoxicated or unconscious individuals).

Adipocere refers to a fatty wax substance that forms on bodies either submerged in water or buried in damp conditions without oxygen and air. Its presence on a corpse recovered from water indicates that the victim probably has been there for a long time.

Lividity

Investigators normally will find postmortem lividity, or blood pooling, on the portion of the body or head lying on the bottom after drowning. For instance, a corpse that ends up face down should have this condition evident on the chest, abdomen, face, or all of those areas. Typically, lividity is most evident in the head or neck because the body normally assumes a position of head down, buttocks up, and extremities dangling downward. Blood pooling not conforming to these patterns should alert authorities to investigate further to determine if death preceded immersion.

Eyes

A drowning victim's eyes provide a ready, easily accessible, and useful source of

information relating to the cause and time of death. As this evidence also is transient in nature, investigators need to note it immediately after recovery.

If death occurred on land, a noticeable horizontal line should exist on the eyeball if, as is common, the eyelids remained partially open, thereby allowing exposure to air and its drying effects. The line, or border, between the clear and cloudy cornea—the raised, usually clear area of the eyeball covering the pupil and iris—and the white and discolored sclera—the opaque, normally white portion—will occur only in these instances.

Conversely, if the victim drowned and is submerged in water at the time of death, then the eyes will retain a lifelike, glistening appearance. No lines will be present.¹⁴

Skin

The skin on the hands and feet of a body will have a wrinkled “washerwoman” appearance if immersed for more than 1 or 2 hours. This is called maceration and does not indicate that the deceased has drowned as it will develop whether the individual was alive or dead when entering the water. After prolonged immersion, the outer layer of skin may become completely separated

from the feet and hands and come off in a glove or sock fashion. Investigators can obtain fingerprints from the intact or detached skin, which retains the same ridge pattern.

Muscles

Rigor mortis, or postmortem rigidity, results from a chemical reaction that commences at death. It usually begins to develop within 2 hours, becoming fully established in 6 to 12. Rigor mortis results from muscle rigidity, not a stiffening of the joints. Once fully established, it remains for a variable period of time and then gradually diminishes (24 to 36 hours after death). Both the onset and disappearance of rigor mortis will vary depending on water temperature. Investigators

should note that cold water can retard the process.¹⁵ Also, it may be poorly formed in infants and elderly persons.

When initially recovered from the water, portions of the body—mainly hands and arms—may appear to be in full rigor mortis, even though only a short time has passed since death occurred. This phenomenon, cadaveric spasm, results from the typically violent struggling of an individual at the time of the drowning. Cadaveric spasm forms only under conditions of extreme mental stress and indicates the victim’s last thoughts and actions. It occurs virtually instantly and only in groups of voluntary muscles, unlike rigor mortis, which progresses evenly throughout the body at a steady rate.¹⁶



© Missouri Water Patrol

Another condition, cutis anserina, or goose flesh, is a spasm of the erector pilae muscles due to rigor mortis. It does not indicate whether the person was alive or dead while entering the water.

Decomposition

Putrefaction refers to the decomposition of the body because of bacteria and fermentation. Although this process can take longer in water-submerged victims, these individuals may remain concealed longer when they become hidden in water or vegetation or lost in a large body of water; this results in correspondingly advanced postmortem changes before recovery. No time schedule for the stages of decomposition exists as differing water and climatic conditions will have a profound effect. Generally, cold and swiftly moving water preserves bodies, whereas heavy clothing and stagnant, warm water hasten decomposition.

The sequence of events remains relatively constant. Skin maceration begins, followed by progressive bloating and discoloration. The abdomen becomes greenish or purple; it also becomes distended because the body cavity fills with gas. Skin and hair detach and the tongue and eyes protrude. Features swell until authorities find victim identification difficult. Advanced stages of putrefaction

can lead to mummification of the skin, especially if the body refloats, becomes exposed to the drying effects of air, and remains hidden for a long time.

Body Posture

Corpses normally exhibit a relaxed, often prone, semifetal position when discovered by divers on the bottom of a body of water. They assume this posture because of the buoyant

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The investigator's role in a drowning investigation is crucial to a medical examiner in establishing an accurate cause of death.

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properties of water; the natural forces exerted by the skeletal muscles, even when relaxed; and the buoyancy of the lungs, which lie nearer the back than the front. In this position, the arms and legs usually are slightly bent at the elbows and knees. The head often tilts slightly forward, and the spine curves slightly. Authorities should see this configuration upon recovery when rigor mortis is developed.

Any person who has died on land and remained in a terrestrial environment during the onset of rigor mortis will display a different posture. The head likely will be rotated to one side, a position almost never found in a drowning victim.¹⁷

Hand and Arm Positions

Investigators often will find a drowning victim's arms bent with the hands turned toward the face when rigor mortis has developed. In those cases, it appears that individuals tried to cover their mouths to prevent drowning. Often, they clinch their hands in a fist. These arm and hand positions are much less pronounced or not present at all in victims who drowned while intoxicated because these individuals generally do not struggle, but simply disappear below the surface of the water.

Sometimes, investigators may find objects in the hands of victims, such as grass from an embankment. If the drowning occurred in relatively shallow water, soil or gravel commonly found on the bottom may be clutched in the hands, indicating that the individual probably entered the water while conscious.¹⁸

Injuries and Marks

Immersion of a body in water for several hours may cause leaching of blood from

injuries, such as propellor cuts, lacerations, and stab wounds. Thus, an individual may have a number of what appear to be bloodless postmortem injuries, which actually are antemortem or agonal and the cause of the person's demise. Of course, all recovered bodies need careful inspection for possible antemortem injuries. Because of the leaching effect, investigators may find detecting these wounds difficult.

Severe antemortem or agonal injuries usually will leave definite signs, such as bruising and dispersing of blood into adjoining tissues, because the heart still was pumping blood when these wounds occurred. This appearance will diminish as putrefaction progresses.

Legitimate postmortem injuries can occur to a body, especially around the head, face, knees, tops of the feet, and backs of the hands, although investigators should take care not to confuse these with defense wounds. A corpse that floats to the surface after partially decomposing is subject to currents that can repeatedly drag it across rocks and obstructions. In a very strong current, the body can travel far underwater, also causing these postmortem injuries.

In addition, marine life can cause postmortem damage to a body. It is not unusual for the

An Online Resource

To assist investigators in conducting drowning investigations, the Missouri State Water Patrol offers an easy-to-follow resource. The *Supplemental Underwater Recovery Report* is available on the agency's Web site at <http://www.mswp.dps.mo.gov/SuppRecoveryReport.pdf>.

lips, ears, and nose to be at least partially eaten away.

Boat propellers also can cause postmortem injuries, especially to a body that floats back to the surface at night and then gets hit by a motorboat before discovery. Investigators must differentiate postmortem propellor cuts from antemortem or agonal ones; in most instances, corpses refloat face-down, so those that occur after death nearly always will be to the back and shoulders, back of the head, or buttocks.

Medical examiners can help draw conclusions about the actual nature of wounds detected. But, investigators must provide all pertinent details.

INDICATIONS IN AUTOPSIES

Over the years, experts have developed and tried a number of tests to determine conclusively whether a person drowned. All have proven unreliable on their own. No morphologic findings diagnostic of drowning exist. Although an autopsy usually is

not sufficient by itself, it can exclude other possible causes of death.¹⁹

Coroners will find the lungs of the typical wet drowning victim large and bulky, completely occupying their respective cavities, with a brick red appearance and large quantities of foamy edema. White foam commonly exists in the trachea and bronchi. The stomach may contain water. There may be dilation of the right ventricle of the heart due to absorption of large quantities of water into the circulatory system.

Examiners may find swelling in the brain and hemorrhaging in the petrous or mastoid bones. Authorities also may encounter these symptoms in people who died of heart disease, abuse of substances, or other causes. Thus, the drug overdose victim dumped in a lake and the heart attack victim collapsing into the water can have the washerwoman and goose flesh appearance, pulmonary edema, and hemorrhage into the petrous and mastoid

bones. This demonstrates for investigators the importance of gathering other information to assist medical examiners in determining the proper cause of death when drowning is suspected.²⁰

Once water has flooded the lungs, osmosis may cause a portion of any alcohol in the blood to pass out of the circulatory system into the flooded alveoli. When this occurs, the possibility exists that the resultant postmortem blood alcohol analysis may measure as much as 30 percent less than before death.²¹

NEW TECHNOLOGY

Through a U.S. Department of Homeland Security grant obtained in the spring of 2004, the Missouri State Water Patrol received money to purchase sophisticated side-scan sonar equipment capable of finding underwater bombs, improvised explosives, and other devices that could pose a risk to bridges, dams, and other structures. Fortunately, it also can locate a human body on the bottom of a lake or river. This technology is far superior to conventional paper or liquid crystal graphs. On a computer monitor, it can paint an accurate picture of the bottom of a waterway and effectively eliminate from consideration large sections of water during a search for bombs, vehicles, planes, evidence, or bodies.

This side-scan sonar equipment has greatly improved the recovery rate of drowning victims in various Missouri waterways. It also has enhanced the efforts of the scuba divers of the Missouri State Water Patrol Underwater Recovery Team. Those personnel now can dedicate their limited air and bottom time to potential targets located by the sophisticated equipment. This technology has successfully found victims in large search areas, even in incidents without a witness or when excited individuals did not precisely note the location of the drowning. The use of the side-scan sonar has resulted in the recovery of victims that otherwise may have remained missing without refloating to the surface.

CONCLUSION

Law enforcement agencies deal with thousands of drowning investigations per year. Officers need to be aware of the unique nature of these incidents. Investigators should not assume that an autopsy will establish cause of death; they need to ascertain as much information as possible at the scene. Then, they must provide these important details to the coroner.

The investigator's role in a drowning investigation is crucial to a medical examiner in establishing an accurate cause of death. The officer must treat a drowning like any other death

investigation and help to make sure it is conducted thoroughly and professionally. Then, the investigator can have confidence in the proper determination of cause of death and, if necessary, will be prepared to pursue the investigation further. ♦

Endnotes

¹ The author based this approximate figure on his professional experience and research. For additional information, visit the Web sites of the Centers for Disease Control and Prevention, www.cdc.gov; the National Safety Council, www.nsc.org; and the National Transportation Safety Board, www.ntsb.org.

² Dominick and Vincent DiMaio, *Forensic Pathology* (Boca Raton, FL: CRC Press, 1983).

³ Ibid.

⁴ Ibid.

⁵ Bradley Stafford, "The Sinking and Rising of Drowned Bodies" (unpublished thesis, 1988).

⁶ Robert Teather, *The Underwater Investigator* (Fort Collins, CO: Concept Systems, 1983); and Robert Teather, *Encyclopedia of Underwater Investigations* (Flagstaff, AZ: Best Publishing, 1994).

⁷ Supra note 5.

⁸ Supra note 6.

⁹ Supra note 6.

¹⁰ Supra note 6.

¹¹ Charles Swanson, Neil Chamelin, and Leonard Territo, *Criminal Investigation* (New York, NY: McGraw-Hill, 1996).

¹² Bernard Knight, *The Coroner's Autopsy* (London, England: Churchill Livingstone, 1983).

¹³ Supra note 6.

¹⁴ Supra note 6.

¹⁵ Supra note 6.

¹⁶ Supra note 6.

¹⁷ Supra note 6.

¹⁸ Supra note 11.

¹⁹ Supra note 2.

²⁰ Supra note 2.

²¹ Supra note 6.



Four Sketches of the
Same Perpetrator

Sexual Assault Series

One Hispanic male, similarly described by victims as being in his late 20s, is believed to be responsible for numerous sexual assaults in the Newark-New York metropolitan area of New Jersey and New York. The subject approached his victims by surprise while they were walking on the street or through parking areas. The subject forced the victims into a parked vehicle and sexually assaulted them. After the subject completed each assault/abduction, he released the victim, completely naked, in another city within the referenced metropolitan area (in the majority of cases).

Alert to Law Enforcement

Law enforcement agencies should bring this information to the attention of all crime analysis and sexual assault/special victims units, as well as officers investigating crimes against persons. Agencies with a similar case or any possible leads pertaining to this series should contact Detective John Savino of the Manhattan Special Victims Squad, New York City Police Department, at 212-694-3010; New Jersey State Police/ViCAP at 609-882-2000, ext. 2786; Crime Analyst Christina Schaub, ViCAP, Quantico, Virginia, at 703-632-4174; or Crime Analyst Christine DePoyster, ViCAP, Quantico, Virginia, at 703-632-4170. ♦

Bulletin Reports

Personnel

The National Institute of Justice (NIJ) offers *Hiring and Keeping Police Officers*, the findings of a study that examined the recent experiences of police agencies nationwide in hiring and retaining sworn officers. Researchers found that while most departments grew in the 1990s as a result of federal funding and demands for service, 20 percent declined in size, most often because of fiscal or recruitment problems. Other findings indicated that agencies with federal hiring funds kept the positions after the grants expired; 9 out of 10 recruits completed their training, although it is taking longer because of the growing complexity of police work; and many officers left their departments after only a few years, often to work for another law enforcement agency. This report is available online at <http://www.ojp.usdoj.gov/nij/pubs-sum/202289.htm> or by calling the National Criminal Justice Reference Service at 800-851-3420.

Victims

The Office for Victims of Crime (OVC) has published *What You Can Do If You Are a Victim of Crime*. This brochure highlights victims' rights, includes compensation and assistance programs, and lists national organizations that can help them find information or obtain referrals. The resource also can be customized with local contact information, including nearby victim resources, and printed on standard 8 1/2- by 11-inch paper. This brochure is available online at <http://www.ovc.gov/publications/factsheets/whatyoucando/fs000301.pdf> or by contacting the National Criminal Justice Reference Service at 800-851-3420.

Corrections

The Bureau of Justice Statistics (BJS) released *Suicide and Homicide in State Prisons and Local Jails*, which describes historical trends in state prison and local jail inmate mortality rates based on inmate death records submitted by local jails (for 2000-2002) and state prisons (for 2001-2002). The report also compares current prison and jail mortality rates by demographic characteristics, offense types, and facility size and jurisdiction and compares the general population mortality rates with those in correctional facilities. Comparisons are made to both the raw mortality rates for the general population and those standardized to match the demographic makeup of the inmate populations. Highlights include the following: in 2002, the suicide rate in local jails (47 per 100,000 inmates) was over three

times the rate in state prisons (14 per 100,000 inmates); homicide rates were similar in local jails (3 per 100,000) and state prisons (4 per 100,000); and violent offenders in both local jails (92 per 100,000) and state prisons (19 per 100,000) had suicide rates over twice as high as those of nonviolent offenders (31 and 9 per 100,000 respectively). This report is available online at <http://www.ojp.usdoj.gov/bjs/abstract/shsplj.htm>.

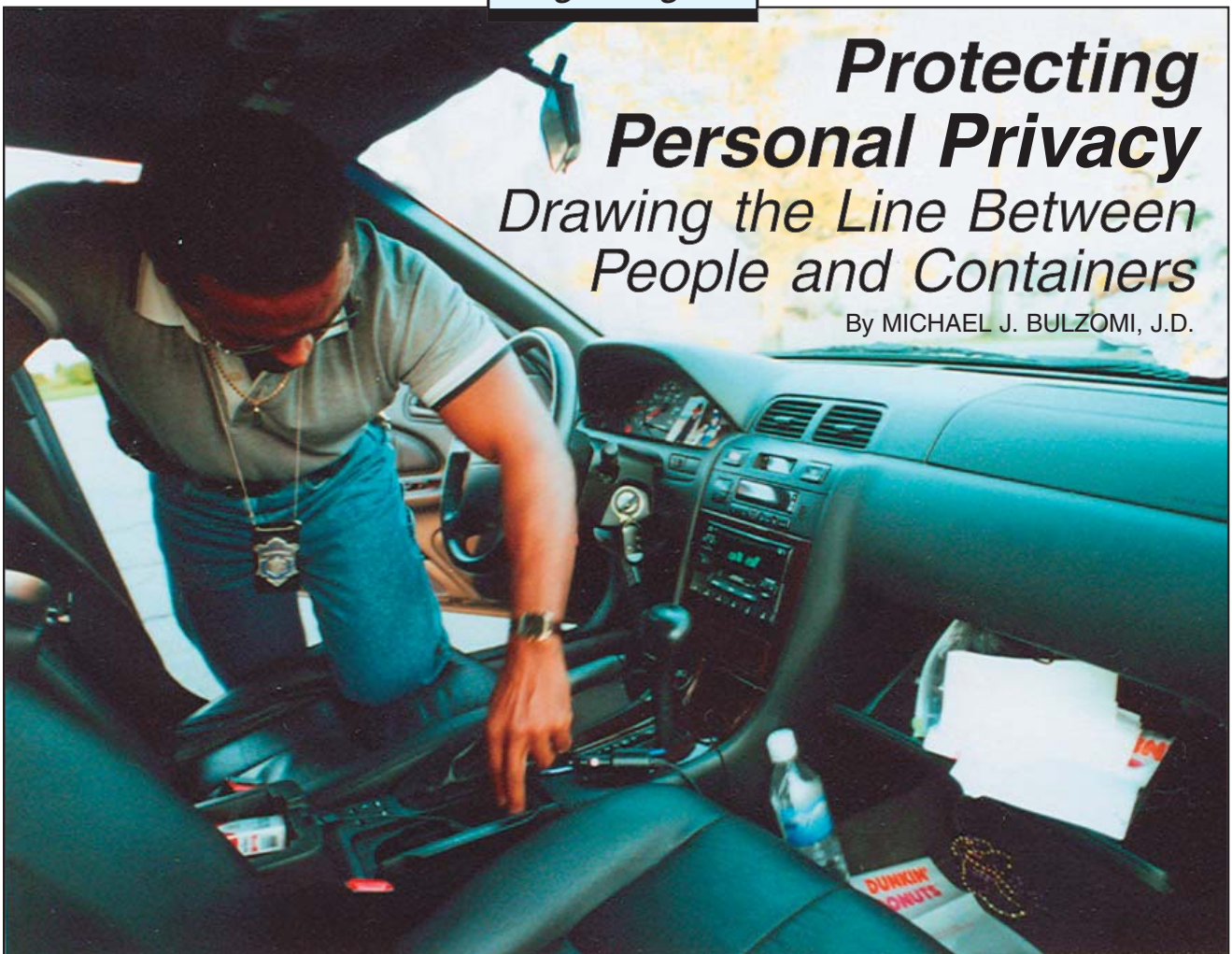
Sexual Offenses

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) presents *Statutory Rape Known to Law Enforcement*. This bulletin draws on data from the FBI's National Incident-Based Reporting System to provide a comprehensive look at patterns of and responses to incidents of statutory rape. Based on an analysis of reports from law enforcement agencies in 21 states for the years 1996 through 2000, this report characterizes victim and offender attributes and law enforcement's responses to these occurrences. This bulletin is available online at <http://www.ncjrs.gov/pdffiles1/ojjdp/208803.pdf> or by contacting the National Criminal Justice Reference Service at 800-851-3420.

Protecting Personal Privacy

Drawing the Line Between People and Containers

By MICHAEL J. BULZOMI, J.D.



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More so today than perhaps at any time in this nation's history, law enforcement officers must be proactive when interacting with individuals in the towns and communities in which they serve. Understanding the full depth of the tools available to ferret out criminal activity and to protect their safety, as well as the safety of others, is critical to law enforcement effectiveness. In the face of this mandate, officers must

constrain their actions according to constitutional principles as interpreted by America's judicial system. Critical in the constitutional analysis is the value afforded personal privacy. This article examines the recognition of personal privacy in the context of a regular and potentially valuable, as well as volatile, law enforcement activity—stopping a vehicle and developing probable cause to search it. Officers must be mindful of the scope of their authority and the legal

tools within their arsenal. These tools may justify further governmental intrusions, including intrusions into personal privacy, when the officer's initial response reveals additional information.

The Fourth Amendment

The Fourth Amendment to the U.S. Constitution reads as follows: "The right of the people to be secure in their persons, houses, papers and



effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”¹ The privacy protected by the Fourth Amendment has its origin in the American colonists’ battle against British government practices.²

These practices included unauthorized general warrants, allowing a virtually unrestricted house search for whatever evidence could be found of interest to the Crown. Such tools provided British officers indiscriminate authority to search people’s homes and property. The framers of the Constitution responded to these unreasonable intrusions with the Fourth Amendment. While relatively brief, the language repudiates the concept of a general warrant, requiring the existence of probable cause and a particularized description of the things to seize and the place to search.

The U.S. Supreme Court, in interpreting the language of the Fourth Amendment, engages in a balancing process, weighing the interests of the government in engaging in a search versus the interests of an individual’s privacy. The practical impact of this balancing in traditional law

enforcement is the presumption in favor of securing a warrant prior to engaging in conduct that would amount to a search under the Fourth Amendment. The Supreme Court has stated that a warrantless search is “per se unreasonable subject to a few specifically established and well-delineated exceptions.”³ The exceptions allow law enforcement officers to bypass the procedures of obtaining a warrant from a judicial officer when there is a determination that a significant government interest in searching without a warrant outweighs the interests of the individual. This significant government interest may include, for example, the need to act to prevent the destruction of evidence or prevent the escape of a dangerous individual.

The Supreme Court recognizes the need for law enforcement to search in the face of an emergency⁴ or incident to

“**...the search of the vehicle pursuant to the motor vehicle exception does not automatically extend to a search of a person within the motor vehicle....**”



Special Agent Bulzomi is a legal instructor at the FBI Academy.

arrest,⁵ following the lawful seizure of property to inventory its contents,⁶ based on the voluntary consent of a party who has authority over the property, and pursuant to the motor vehicle exception.⁷ This article focuses on the scope of the authority when engaged in the stop of a vehicle and when, during this stop, information is developed leading to a search.

The Motor Vehicle Exception

The motor vehicle exception to the Fourth Amendment, first recognized by the Supreme Court in *Carroll v. United States*,⁸ permits an officer to search a vehicle without a search warrant if there is probable cause to believe that evidence or contraband is in the vehicle. In *Carroll*, officers had probable cause to believe that a vehicle contained contraband, in this case, hidden bootleg

liquor. The officers searched the vehicle and found the bottles of liquor within the upholstery of the seats. The occupants of the vehicle were subsequently arrested. The arrestees sought to have the evidence suppressed, arguing that it was seized in violation of the Fourth Amendment. The Supreme Court ruled that the search was reasonable by recognizing that the Fourth Amendment reasonableness requirement must recognize the need to search a vehicle under such circumstances without requiring officers to stop and proceed to a judicial officer beforehand. The Supreme Court, in creating the motor vehicle exception to the warrant requirement, justified this exception by recognizing the difference between searches of fixed premises and searches of motor vehicles, the latter capable of being “quickly moved out of the locality or jurisdiction in which the warrant must be sought.”⁹

Considering this mobility, the Court concluded that to require officers to secure a warrant before searching a vehicle would risk the loss of evidence. The Court further noted that the expectation of privacy in vehicles is reduced because they are modes of transportation, rather than a storage area for personal effects, and because they travel on public roads with occupants

and contents largely in view.¹⁰ Since *Carroll*, the Supreme Court has decided cases with varying circumstances that have led to an expansion and clarification of the exception.¹¹

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Containers Within the Vehicle

An area of uncertainty within the motor vehicle exception relates to the discovery of containers within the vehicle. In *United States v. Ross*,¹² the Supreme Court ruled that a warrantless search of a closed paper bag found inside a trunk of a vehicle by police officers acting on a tip from an informant that the driver was in possession of heroin was reasonable. The Court addressed the scope of the search under the exception and held that probable cause to search a lawfully stopped vehicle empowered the officers to search “every part of the vehicle and its contents”¹³ that might contain

the item(s) for which the officers have probable cause to search. Thus, if the container within the vehicle could hold the object of the search, officers were authorized to search it. The Court in *Ross* explained, “[j]ust as probable cause to believe a stolen lawnmower may be found in a garage will not support a warrant to search an upstairs bedroom, probable cause to believe that undocumented aliens are being transported in a van will not justify a warrantless search of a suitcase.”¹⁴ The Court emphasized that the scope of the warrantless search is no different than it would be for a search done with a warrant.

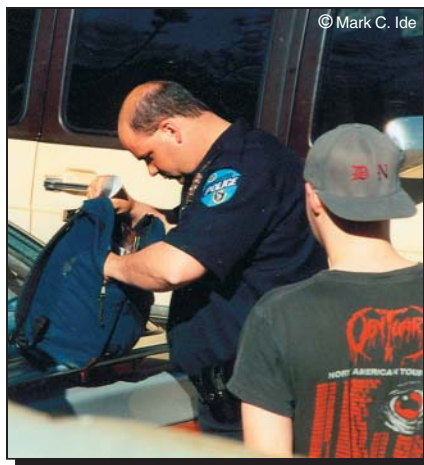
Similarly, in *California v. Acevedo*,¹⁵ police observed the defendant place a bag containing contraband into the trunk of a vehicle. They subsequently opened the trunk and searched the bag. The defendant argued that the search was unreasonable as the probable cause was focused on the bag and it was just a coincidence that it was placed in the vehicle. Providing a bright-line principle to law enforcement, the Supreme Court held that where the probable cause was focused was not important when determining whether the exception applies. However, as to the scope of the warrantless search, such information may limit where officers may search. At the time

of the search in *Acevedo*, the police did not have probable cause to believe that contraband was hidden in any other part of the vehicle, and, thus, an entire search of it would have been without probable cause and, therefore, unreasonable under the Fourth Amendment.

Through these cases, the Supreme Court has carved out an exception to the warrant requirement that can be reduced to some basic guiding principles. First, police are able to search a motor vehicle without a warrant if there is probable cause to believe that contraband or evidence is contained therein. Second, the scope of the warrantless search is no broader or narrower than could be authorized by a search warrant. Third, containers within a vehicle may be searched when it is reasonable to believe that the object of the search is likely to be within the container. Finally, the mere fact that officers have probable cause to believe that a container placed in a vehicle contains contraband or evidence does not justify a search of the entire vehicle.

Despite the apparent clarity of this exception, not all scenarios fit within the principals. This is the area in which personal privacy plays a critical role. Questions remain as to whether officers are authorized to search a container that is the personal property of a person

who happens to be inside the vehicle but for which the officers have no information indicating that individual's involvement in criminal activity. While not addressing this issue directly, the Supreme Court's decision in *Wyoming v. Houghton*¹⁶ offers some guidance in clarifying the scope of the motor vehicle exception as it relates to personal privacy.



In *Houghton*, the defendant was traveling down a deserted highway in a vehicle driven by a friend and accompanied by her friend's girlfriend. At approximately 2 a.m., a Wyoming Highway Patrol officer stopped the vehicle for speeding and faulty break lights. Houghton and the others were all sitting in the front seat of the vehicle. Noting a syringe in the driver's front shirt pocket, the officer questioned the driver regarding its use. The driver admitted to using the syringe to take drugs.

In apparent response to the driver's conversation with the officer, backup officers who had just arrived at the scene ordered the two female passengers out of the vehicle and asked for identification. The original officer, believing the vehicle contained contraband, began a search of the passenger area of the vehicle.

During the search, the officer discovered a purse in the back seat that Houghton admitted was hers. The officer looked in the purse and found a black wallet-type container and a brown pouch. The officer searched these items and found drugs. The officer then arrested Houghton. The defendant moved to suppress the evidence, arguing that the officer lacked probable cause to believe that her purse contained any evidence of wrongdoing. The Wyoming Supreme Court agreed, holding that the officer lacked probable cause to believe that the container (purse) found in the vehicle contained any evidence of criminal activity given the officer knew it belonged to the passenger as opposed to the driver. The state of Wyoming appealed the decision to the U.S. Supreme Court.¹⁷

The Supreme Court reversed the state decision, holding that once probable cause exists to search a vehicle, personal belongings found

inside the vehicle may be searched as well without regard to a warrant or ownership, provided it is reasonable to conclude that the object of the search could be found within the belongings. However, recognizing the heightened importance of personal privacy, the Court warned that absent independent justification, the search of the vehicle pursuant to the motor vehicle exception does not automatically extend to a search of a person within the motor vehicle or even a limited search of a person's outer clothing.¹⁸ Of course, this presumes that no independent justification exists to support an intrusion into the personal privacy of the individual, such as specific and articulable facts indicating the individual may be armed supporting a limited search of the person's outer clothing. Even then, the Supreme Court, referring to its landmark ruling in *Terry v. Ohio*,¹⁹ noted "[e]ven a limited search of the outer clothing... constitutes a severe, though brief, intrusion upon cherished personal security, and it must surely be an annoying, frightening, and perhaps humiliating experience."²⁰

Personal Privacy

The Fourth Amendment allows officers to take action when concerned with their safety or where necessary to prevent the destruction of

evidence while still maintaining the sanctity of personal privacy. The importance of personal privacy was recognized in a 1948 Supreme Court case, *United States v. Di Re*.²¹ In this case, the Supreme Court focused on the importance of personal privacy and opined that even if officers have probable cause to search a vehicle, it does not necessarily extend to a search of the person within

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...the scope of the warrantless search is no broader or narrower than could be authorized by a search warrant.

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the vehicle. The Court stated that it was “not convinced that a person, by mere presence in a suspected car, loses immunities from search of his person to which he would otherwise be entitled.”²²

The weight given personal privacy also was recognized in *Ybarra v. Illinois*,²³ a case involving the execution of a search warrant at a public tavern. The warrant authorized the search of the tavern and the person of the bartender for evidence relating to the possession of narcotics. During the search,

officers encountered Ybarra, a patron of the tavern. Ybarra was initially confronted and patted down. Officers returned to him, patted him down a second time, and removed a cigarette pack that was found to contain foil packets full of heroin. The Supreme Court ruled that the second pat down and the retrieval of the cigarette pack violated the Fourth Amendment as the search of Ybarra was not within the scope of the warrant and no independent grounds justified this intrusion. Given the similarity in the parameters of the scope of the search of a vehicle under the motor vehicle exception and a search pursuant to a search warrant, law enforcement must be able to recognize and justify intrusions into personal privacy based on the uniqueness of the situation as opposed to relying on what initially justified the search but may not justify the search of a person.

Conclusion

American society has changed dramatically since these early decisions of the Supreme Court. However, despite these dramatic changes, a common thread tying the past with the present has been the importance of personal privacy within the Fourth Amendment. The Supreme Court's opinions indicate a sensitivity on its part to the difficult nature of police work and the great risks

routinely confronting law enforcement. Recognizing these two principles, law enforcement officers who are sworn to uphold and defend the Constitution must understand and discern the limitations imposed on their authority to respect the rights guaranteed to people. ♦

Endnotes

- ¹ U.S. CONST. Amend. IV.
- ² See Tracey Maclin, *The Complexity of the Fourth Amendment: A Historical Review*, 77 B.U.L. Rev. 925-926, 945 (1997).
- ³ *Katz v. U.S.*, 389 U.S. 347 (1967).
- ⁴ *Schmerber v. California*, 384 U.S. 757 (1966); *Terry v. Ohio*, 392 U.S. 1 (1968).

⁵ *U.S. v. Robinson*, 414 U.S. 218 (1973); *U.S. v. Edwards*, 415 U.S. 800 (1974); *Maryland v. Buie*, 494 U.S. 325 (1990).

⁶ *South Dakota v. Opperman*, 428 U.S. 362 (1976); *Florida v. Wells*, 495 U.S. 1 (1990).

⁷ See *U.S. v. Matlock*, 415 U.S. 164 (1974).

⁸ 267 U.S. 132 (1925).

⁹ *Id.* at 153.

¹⁰ *Cardwell v. Lewis*, 417 U.S. 583 (1974).

¹¹ See *U.S. v. Johns*, 469 U.S. 478 (1985); *Michigan v. Thomas*, 458 U.S. 259 (1982); *Florida v. Meyers*, 466 U.S. 380 (1984); *Pennsylvania v. Labron*, 116 S.Ct. 2485 (1996).

¹² 456 U.S. 798 (1982).

¹³ *Id.* at 825.

¹⁴ *Id.* at 824.

¹⁵ 500 U.S. 565 (1991).

¹⁶ 526 U.S. 295 (1999).

¹⁷ 956 P.2d 363 (*Houghton v. State*).

¹⁸ 526 U.S. at 3080. Moreover, Justice Breyer stated in his concurring opinion that he would be inclined to give increased protection to a purse if the owner was wearing the purse at the time of the search.

¹⁹ 392 U.S. 1 (1968).

²⁰ *Houghton* at 303, quoting *Terry v. Ohio* at 392 U.S. 1 at 24-25.

²¹ 332 U.S. 581 (1948).

²² *Id.* at 587.

²³ 444 U.S. 85 (1977).

Law enforcement officers of other than federal jurisdiction who are interested in this article should consult their legal advisors. Some police procedures ruled permissible under federal constitutional law are of questionable legality under state law or are not permitted at all.

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The Bulletin Notes

Law enforcement officers are challenged daily in the performance of their duties; they face each challenge freely and unselfishly while answering the call to duty. In certain instances, their actions warrant special attention from their respective departments. The *Bulletin* also wants to recognize those situations that transcend the normal rigors of the law enforcement profession.



Sergeant Citta



Officer Fitzgerald

Early one morning while on patrol, Sergeant James Citta and Officer Dan Fitzgerald of the Seaside Park, New Jersey, Police Department noticed flames emerging from a second-floor bedroom window of a residence. They also observed the living room television playing and a vehicle in the driveway. After no one answered the locked door, both officers disregarded their own safety and forcibly entered the burning building. Once inside the smoke-filled house, they called out to and searched for anyone present. The officers heard a voice and located a man at the top of the stairs; he was

coughing and choking from the smoke and had difficulty standing. Both officers grabbed him and escorted him outside, handing him off to other officers who had arrived. Sergeant Citta and Officer Fitzgerald attempted reentry to search for other residents but could not because of the smoke and flames. Fortunately, when the victim became coherent, he advised that no one else was inside. The brave, selfless actions of these officers saved this man's life.



Officer Lettieri

Officer Donald Lettieri of the Suffolk County, New York, Police Department was on duty in the Fire Island community, which is physically separated from Long Island and regular patrol and backup units. From the roadway, he noticed heavy smoke emanating from a residence and saw fire through one of the windows. Quickly, he forced his way inside, discovered a woman sleeping in a rear bedroom, and helped her to safety. Then, Officer Lettieri reentered and extinguished the blaze. Both he and the victim required medical attention. The heroic actions of Officer Lettieri prevented this woman's death.

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